Clara Maass Continuing Care Center *and* District 1199J, National Union of Hospital and Health Care Employees, AFSCME, AFL–CIO. Case 22–CA–18189

February 22, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

At issue is whether the Respondent engaged in conduct violative of Section 8(a)(1) of the Act within the 10(b) period.

On September 29, 1992, Administrative Law Judge Raymond P. Green issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed a brief in opposition to the exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

[1] The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We note that one of the General Counsel's witnesses testified to two instances of interrogation by Supervisor Irene Schneider, occurring during August 1991, within the 10(b) period. The judge, however, credited Schneider's denial that any such interrogations occurred.

William Milks, Esq. and *Dorothy Karlebacb, Esq.*, for the General Counsel.
Michael Barabander Esq. (Grotta Glassman & Hoffman, P.A.), for the Respondent.
Donald Neilly, Representative, for the the Charging Party.

DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. This case was tried in Newark, New Jersey, on May 18 and July 22, 1992. The charge was filed on December 27, 1991, and the complaint was issued on February 10, 1992. In substance, the complaint alleged:

1. That in July 1991, the Respondent by Patricia Meyers, its assistant administrator, and Mary Anne Pettis, its director of nursing, interrogated employees about their union activities, solicited grievances, created the impression of surveillance, and implicitly threatened employees with unspecified reprisals.[1]

2. That in late July 1991, the Respondent, by Pettis, interrogated employees, solicited grievances, and implicitly threatened employees.[2]

3. That in August 1991, the Respondent by Irene Schneider, a supervisor, interrogated employees about their union activities. (This relates to two alleged conversations between Victoria Ortiz and Schneider.)

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that it is a health care institution within the meaning of Section 2(14) of the Act. It also is agreed by the parties that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

According to Carrie Chandler Butts, a patient care attendant (PCA), the Union began its attempt to organize employees in April 1991.[3]

Chandler testified that there were *two* meetings where Patricia Meyers and Mary Anne Pettis spoke with employees about the Union and union activities; one during April 1991 and the other at some unspecified time somewhere between July 7 and Labor Day. In this regard, the General Counsel also presented two other employee witnesses who testified about attending a meeting some time in July 1991 where there was discussion of a union.

All of the Respondent's witnesses testified that there was only *one* set of group meetings concerning the Union, those being held on each of the Employer's three shifts on one day in April 1991. They further testified that, although there was a set of meetings held on July 30, 1991, nothing was said at those July meetings about a union.

The difference between the General Counsel and the Respondent as to whether the meeting was in April or July is significant because the l0(b) statute of limitations period begins on June 27, 1991, and the Respondent correctly asserts that anything said by management at a meeting in April 1991 cannot be the basis of an unfair labor practice complaint. The date is also significant as the General Counsel's witnesses tended to be vague about dates and tied other conversations to the alleged meeting in July.[4]

[1] All of these allegations relate to a single meeting that allegedly was held in July 1991.

[2] All of these allegations relate to a single conversation held between Allegra Shipley and Pettis. This conversation, according to Shipley, occurred a couple of weeks after the meeting described in fn. 1.

[3] According to Chandler the Union had tried and failed to organize the employees on earlier occasions.

[4] For example, Allegra Shipley testified that the meeting at which Meyers spoke about the Union occurred in July 1991. Shipley also

According to Chandler, on or about April 18 or 19, 1991, she was called into Meyers' office where she was asked what was going on with the Union. She states that she responded that she didn't know and that Meyers said that she (Meyers), had heard about a union. According to Chandler, she told Meyers that in her opinion the employees wanted someone to talk up for then and that Meyers said that this was not necessary as the Company was like a family.

Chandler states that on that same day in April, Meyers and Pettis held a meeting with employees in the second floor dining room where Meyers stated to the assembled employees, ''Why do you want a union, we're like a family.'' Meyers is alleged to have said that she knew who signed cards and who attended union meetings. According to Chandler, Meyers also stated that no one had ever been fired except in cases of child abuse.

Chandler, who went on medical leave from April 22 to July 6, 1991, testified that there was a second meeting held sometime in the summer where Meyers and Pettis talked about the Union. According to Chandler, Meyers essentially repeated the same things that she had said at the previous April meeting. She states that Meyers asked why the employees wanted a union inasmuch as they were supposed to be a family and said that if they had and problems, the employees could come to Meyers with them. Chandler asserts that Meyers stated that if a union got in there wouldn't be any more merit raises; that they wouldn't be able to allow employees to go home early; and that the employees would not get what they usually got. Chandler finally states that Pettis said that the Employer could always get other attendants; that attendants were ''a dime a dozen.''

Allegra Shipley, who also was a PCA on the second shift with Chandler, testified that she attended a meeting at about 9:30 p.m. in July 1991, where Pat Meyers asked if the employees knew anything about the Union and also asked what she (Meyers), was doing wrong. According to Shipley, Meyers asked what a union could do that they (the Company), couldn't do. She states that Meyers said that with a union things would have to change; that they would have to go by the book; that the employees might not get free coffee anymore; and that the Company would have to tighten up on call ins.

While corroborating Chandler's account in certain respects, Shipley testified, on cross-examination, that she did not believe that Chandler was present at this meeting. She also testified that she did not recall any meetings in April where a union was discussed and that there was a separate meeting held in July 1991 where Meyers talked about an upcoming state inspection, an Alzheimer's unit, and day care unit. It is noted that Shipley did not mention anything about Pettis' alleged comments that attendants were replaceable or were a ''dime a dozen.''

Victoria Ortiz testified that some time in July 1991, she attended a meeting where Meyers talked to the nurses. (Ortiz worked on the 11 p.m. to 7 a.m. shift and this meeting would have been at a different time of day in July than the meeting attended by the PCAs on the second shift which runs from 3 to 11 p.m.). Ortiz states that during the first part of this meeting, Meyers spoke about the upcoming state inspection and about the proposed Alzheimer's unit. She testified that during the latter part of the meeting, Meyers asked the nurses if they had heard anything a union and if the PCAs were coming to the nurses for advice about a union. Ortiz states that Meyers said that ''they'' (presumably the Company), didn't want the Union and that the nurses should tell this to the other employees.

All of the Respondent's witnesses emphatically asserted that there was a group of three meetings held on July 30, 1991, one for each shift and that there was no mention of a union or union activities made at any of these meetings. They testified that all of these meetings on July 30 had to do with the state inspection that was scheduled to occur some time in August 1991 (the exact date being a surprise to both management and employees), and with plans for a day care center and an Alzheimer's unit.

The Respondent's witnesses testified that the only time that Meyers held a set of meetings with employees concerning union activities was in April 1991: such meetings being held on each of the three shifts during a single day. In this respect, Meyers and the other company witnesses (except for supervisor of nurses, Schneider, who states she was not present), essentially testified that Meyers told the employee that she was aware that union cards were being passed around, that she would prefer to be able to communicate directly with employees rather than have a third party, that if there was a union everything that they had would be negotiable and that the choice was one that was up to the employees.

I am inclined to believe the Respondent's witnesses and conclude that these meetings took place in April and not in July.

In addition to the testimony of three employees that they attended meetings either in July or during the summer of 1991, the General Counsel introduced more handwritten notes that Supervisor Irene Schneider made to herself. (Schneider is the supervisor of the third shift). These notes, which are on the back of the summer work schedule, indicate that a meeting was held on July 30, 1991, where the topics were the state inspection, a day care center, and an Alzheimer's unit. Immediately beneath those notes is a notation in what appears to be a different pen stating: ''Re: Union who wants Union? 11–7 Not aware.'' Under that are some other notes bearing the date July 31, 1991, and dealing with other issues irrevelant to this case. Schneider, who impressed me as an honest witness, acknowledged that the notes were hers and that the comments regarding the Union were made either late on July 30 or on July 31. However, Schneider's testimony was that the notes pertaining to the Union did not refer to anything said at the the July 30 meeting, but rather had to do with the fact that on that day, a number of the night-shift employees had asked her what she knew about the Union. That the reference to the Union did not relate to the meeting, tends to be corroborated by evidence that they were written with a different pen than the notes she took concerning what was said at the July 30 meeting.

Unlike Respondent's witnesses who testified that there was a specific set of meetings held on July 30, 1991, the General

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testified that the had a private conversation with Pettis a couple of weeks after that meeting at which Pettis interrogated her, solicited grievances, and made threats. If, as the Company contends, the meeting in question was held in April 1991 (rather than in July), then the private conversation between Shipley and Pettis, assuming it even occurred, could have had to be held either in late April or in early May, either of which would be outside the 10(b) period.

Counsel's witnesses could only relate that the meetings at which Meyers allegedly spoke about the Union were on some unspecified dates. In the case of Chandler, she testified that there were two such meetings, one in April 1991 and the other on some unspecified date in the summer of 1991. (In her pretrial affidavit, Chandler made no mention of any April meetings and thereby implied that there was only one meeting where Meyers spoke about union activity). Shipley, on the other hand, testified that they could recall only one meeting occurring on an unspecified date in July *where Chandler probably was not present*. (In fact, Chandler's timecards show that they were not present on July 30, the date that the Company asserts that the July meetings took place.)[5]

That the meetings about the Union took place in April is consistent with the uncontested evidence. The Union began organizing and passing out authorization cards in April 1991. It did not, thereafter, file an election petition with the Board or demand recognition from the Employer. Since union activity commenced in April, it would be reasonable for the Company to respond in some manner as soon as it became aware of that activity, rather than wait for 3 to 4 months to do or say anything. Indeed, there does not appear to be any event, circumstance or occurrence which reasonably would have triggered some kind of antiunion response in July or at any time after April.

To the extent that Company's management or supervisors made any statements to employees about unions or union activities, it is concluded that such statements occurred in April 1991, outside the l0(b) period. I credit the denials by the Respondent's witnesses with respect to any remarks attributed to them which are contended as being violative of the Act and are alleged to have occurred in July or August 1991. As it is my opinion that the testimony of General Counsel's witnesses was too vague, contradictory, and unreliable to support the contention of the complaint, I conclude that the evidence does not tend to support the complaint's allegations by a preponderance of the evidence.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

The complaint is dismissed.

[5] The affidavits obtained from Chandler and Ortiz were obtained during the investigation of separate charges alleging, inter alia, that their discharges were unlawful. Neither of those charges are part of the present case and both were withdrawn on December 30, 1991, without any kind of settlements. I assume therefore that the Region determined that the charges lacked merit.

[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.